REMARKS

I. INDEFINITENESS REJECTION

Claim 27 was rejected for indefiniteness under 35 U.S.C. 112, second paragraph.

Method claims 19 and 27 claim the method of application of the applicants' hair wax composition.

This method is explained on page 4, lines 4 to 17, and on pages 13 and 14 of the applicants' originally filed specification. When the composition is first applied it has a comparatively high strong stickiness during a temporary phase immediately after application. The specification on page 4, line 7, teaches that this temporary phase lasts about 20 to 30 seconds. After the temporary phase in a subsequent or other phase the composition applied to the hair is comparatively less sticky than in the temporary phase.

Claim 27 has been amended to indicate that the composition is less sticky in the other phase after the temporary phase. This provides the needed comparison standard so that the wording "less sticky" is not indefinite.

In addition claim 19 has been amended to make its wording somewhat clearer and to express the method somewhat more distinctly.

The dependent claims 8, 18, and 26, which recite preferred waxes, have been amended to eliminate indefinite wording. The term VASELINE® is a

trademark for a petrolatum product and has been deleted from these dependent claims since it is (1) redundant and (2) a trademark (trademarks are usually not permitted in claims since their meaning can change with time). The term "wool wax derivative" has been changed to "wool wax alcohol" because the term "derivative" is usually considered of indefinite scope. Basis for this latter changes is found on page 8, line 14, of the applicants' specification.

For the foregoing reasons and because of the changes in claim 27 withdrawal of the rejection of amended claim 27 under 35 U.S.C. 112, second paragraph, for indefiniteness is respectfully requested.

II. OBVIOUSNESS REJECTION

Claims 1 to 27 were rejected under 35 U.S.C. 103 (a) as obvious over Stein, et al, (US Patent 6,582,679), in view of Yoshida, et al (US Patent 6,649,154), in view of Garces Garces (US Patent 6,733,790), and further in view of Krause, et al (US Patent 7,037,488).

The above-identified U.S. Patent application, Ser.No.10/628,060, was filed in the U.S. on July 25, 2003, but has claimed priority of invention under 35 U.S.C. 119, based on German Patent application DE 102 34 801.4, filed July 31, 2002 in Germany. Notice of the claim of priority has been provided by item # 15 of the application data cover sheet, in the Declaration of Inventorship, and on page 18, lines 7 to 11, of the specification of the above-identified U.S. Patent Application.

Applicants are perfecting their claim for priority based on DE 102 34 801.4

so that claims 1 to 27 of the above-identified U.S. Patent Application can be accorded the filing date of the DE application, namely July 31, 2002, as the date of invention of the claimed subject matter. In order to do that a certified English translation of the priority document, DE 102 34 801.4, accompanies this amendment along with an Official copy of the priority document DE 102 34 801.4 issued by the German Patent Office with the appropriate official seal.

Thus claims 1 to 27 should be accorded the benefit of the filing date of the DE application in Germany as the date of invention of the claimed subject matter of claims 1 to 27. Also an acknowledgement of the submission of the Official copy of the DE priority document is respectfully requested, since this acknowledgement was not provided on the PTOL-326 form in the Office Action.

Thus Stein, et al, which issued June 24, 2003, and Krause, et al, which issued May 2, 2006, are only valid prior art references under 35 U.S.C. 102 **(e)** so that the exception under 35 U.S.C. 103 (c) applies here, because both Stein, et al, and Krause, et al, are owned 100 % by the same owner (Wella AG) as the above-identified U.S. Patent Application. A valid rejection under 35 U.S.C. 103 **cannot** be based on Stein, et al; and/or Krause, et al; or any combination of either of these references or both with other prior art references.

The applicants were under a duty to assign the subject matter of the invention claimed in the above claims 1 to 27 to Wella AG at the time the invention was made and both the Stein, et al, application and the Krause, et al, application from which their patents issued were either assigned to Wella AG at the time the invention claimed in the above claims 1 to 27 was made or were

under a duty to assign their respective inventions to Wella AG.

In other words, the above-identified U.S. Patent Application, Ser. No. 10/628,060, and Stein, et al, (US Patent 6,582,679) and Krause, et al (US Patent 7,037,488) were, at the time that the invention claimed in the above claims 1 to 27 was made, owned by, or subject to an obligation of assignment to, Wella AG. See MPEP 706.02 (l) (2) II.

For the foregoing reasons the withdrawal of the rejection of amended claims 1 to 27 as obvious under 35 U.S.C. 103 (a) over Stein, et al, (US Patent 6,582,679), in view of Yoshida, et al (US Patent 6,649,154), in view of Garces Garces (US Patent 6,733,790), and further in view of Krause, et al (US Patent 7,037,488) is respectfully requested, because the exception under 35 U.S.C. 103 (c) applies in the case of both Stein, et al, and Krause, et al.

Should the Examiner require or consider it advisable that the specification, claims and/or drawing be further amended or corrected in formal respects to put this case in condition for final allowance, then it is requested that such amendments or corrections be carried out by Examiner's Amendment and the case passed to issue. Alternatively, should the Examiner feel that a personal discussion might be helpful in advancing the case to allowance, he or she is invited to telephone the undersigned at 1-631-549 4700.

In view of the foregoing, favorable allowance is respectfully solicited.

Respectfully submitted,

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